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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,549	01/18/2001	John D. Martin	KCOS116809	9921

26389 7590 03/25/2004

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EXAMINER
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RESTIFO, JEFFREY J

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/766,549

Applicant(s)

MARTIN ET AL

Examiner

Jeffrey J. Restifo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14-24, 26 and 28-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22-24, 26, 28-34, 36 and 37 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 5, 8-10, 12, 14-20, 35 and 38-40 is/are rejected.
- 7) ☒ Claim(s) 3, 6, 7, 11 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Terminal Disclaimer***

1. The terminal disclaimer filed on 1/5/04 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 09/757827 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Acknowledgments***

2. Acknowledgment is made of the amendment filed 1/5/04.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 5, 8-10, 12, 14-20, 35, 38, 39, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Ueda (US 5,727,429 A).

With respect to claims 1, 4, 8-10, 12, 14-20, 35, 38, 39, and 40, Ueda discloses an athletic shoe (or boot) comprising an upper and an outsole body 18 with toe and heel regions, a frame (or base) member, shown by dotted line, secured and embedded in said outsole, a cleats 16, and a pair of adjustment members (or spacers) 150 mounted at the toe region and extendable away from said frame for engaging a binding member

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12 by means of a driving tool, as shown in figures 1 and 2. Due to the broadness of the claim and lack of recited structural interaction between the adjustment members and binding, the claims read on the pedal binding of Ueda.

With respect to claim 2, Ueda discloses said adjustment members include engagement portions and threaded portions (not numbered).

With respect to claim 5, Ueda discloses said frame member as having fore and aft holding members 140, 142 for engaging the threaded portion of said adjustment members, as shown in figures 1-2.

***Allowable Subject Matter***

5. Claims 22-24, 26, 28-34, 36, and 37 are allowed.
6. Claims 3, 6, 7, 11, and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. The following is an examiner's statement of reasons for allowance:

In claims 3 and 37, the recitation of the engaging portions of the adjustment members as being made of an elastomeric material in combination with the rest of the recited structure defines over the prior art.

In claims 6, 7, and 21, the recitation of a plurality of base members in combination with the rest of the recited structure defines over the prior art.

In claims 22 and 30, the recitation of a snowboard boot and binding in combination with the rest of the recited structure defines over the prior art.

In claim 36, the recitation of a plurality of interchangeable adjustment members in combination with the rest of the recited structure defines over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1-12, 14-24, 26, and 28-40 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey J. Restifo whose telephone number is (703) 305-0579. The examiner can normally be reached on M-F (10:00-6:00), alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Johnson can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JJR

Jeffrey J. Restifo  
Examiner  
Art Unit 3618



BRIAN L. JOHNSON  
SUPERVISORY PATENT EXAMINER  
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3/1/04